

## AMENDMENT AND RESPONSE UNDER 37 CFR § 1.116 - EXPEDITED PROCEDURE

Serial Number: 09/811,158

Filing Date: March 16, 2001

Title: MAINTAINING MEMBERSHIP IN HIGH AVAILABILITY COMPUTING SYSTEMS

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Dkt: 499.057US1

REMARKS

This responds to the Final Office Action mailed on June 15, 2005.

Claims 1 and 2 are amended, no claims are added or canceled; as a result, claims 1-3 remain pending in this application.

§102 Rejection of the Claims

Claim 1 was rejected under 35 U.S.C. § 102(e) as being anticipated by Chao et al (U.S. Patent No. 6,438,705). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim*." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Applicant respectfully submits Chao does not anticipate the claims as amended because Chao does not disclose each and every element of claims 1 and 2. Claims 1 and 2 as amended recite using a proposal message and a commit message to determine process membership in a group of processes which are eligible for failure detection and migration. Applicant has reviewed Chao and can find no reference to communicating group membership using a proposal message and a commit message. As a result, Chao does not disclose each and every element of claims 1 and 2. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1 and 2.

Claim 3 was rejected for the same reasons as claim 2. Applicant respectfully submits that claim 3 is not anticipated for the same reasons as discussed above with respect to claim 2. Applicant respectfully requests the withdrawal of the rejection of claim 3.

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**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

PADMANABHAN SREENIVASAN ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.


P.O. Box 2938

Minneapolis, MN 55402


(612) 373-6954

Date August 15, 2005

By

  
Rodney L. Lacy  
Reg. No. 41,136

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date shown below.

  
Rodney Lacy

August 15, 2005  
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